

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 296 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----

BHAGABHAI CHHAGANBHAI PATEL

Versus

DIRECTOR OF SOCIAL WELFARE

-----

Appearance:

MR MUKESH R SHAH for Petitioner

MR HH PATEL with MR SP HASURKAR for Respondent No. 1

-----

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/08/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner, a Project Officer, Social Welfare Department, to the order of the respondent dated 31st December 1994, under which he was placed under suspension as a criminal case was pending investigation against him.

#. This Special Civil Application was presented in this Court on 18.1.95. It has come up for preliminary hearing in the Court on 19.1.95. The Court has been pleased to issue notice to the respondents returnable on 2nd February, 1995. In the meanwhile and until further orders, ad-interim relief in terms of prayer clause 11(C) has been granted. Para 11(C) of the Special Civil Application reads as under:

Pending hearing and final disposal of this Special Civil Application by this Honourable Court, be pleased to grant ad-interim relief of implementation and execution of the suspension order dated 31.12.1994 passed by the respondent which is at Annexure-D to the petition; and further directing the respondent, his officers, agents and servants to allow the petitioner to work at Gandhidham at Government Kumar Chhatralay, as per the transfer order dated 28.11.1994.

#. So the stay of implementation, execution and operation of the order of suspension dated 31st December 1994, as ordered, continues till this date. Criminal case is of the year 1994 and it may take further more years to reach to the final stage.

#. It is the contention of the learned counsel for the petitioner that the petitioner has been ordered to be transferred at a distant place, i.e. to Gandhidham from Valsad and that would have been a sufficient measure to keep him away from the office in question as well as to reduce his powers to influence the witnesses or to otherwise tamper with the evidence.

#. However, I do not consider it to be necessary to go on the merits of the contention raised by learned counsel for the petitioner. Under Rule 5 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, the competent authority is empowered to place an officer under suspension where against him some criminal case is pending investigation or trial or where any departmental inquiry is in contemplation or pending. So there cannot be any dispute on the fact that the respondent has powers to place the petitioner under suspension under the rules aforesaid. This order is appealable under the rules aforesaid and the reference may have to the Rule 18 of the Rules aforesaid. When the order is appealable, I fail to see any justification in the approach of the petitioner to this Court directly. Where against the impugned order a litigant has an efficacious alternative

statutory remedy of appeal, the Court should first insist to the litigant to avail that remedy. This approach of litigants directly to this Court in the matters where efficacious statutory alternate remedy of appeal or revision is available deserves to be deprecated.

#. The learned counsel for the petitioner has given out explanation of approaching directly before this Court by petitioner that the appellate authority has no powers to grant interim relief.

#. I fail to see any justification in this action of the petitioner to circumvent the statutory remedy of appeal available against the impugned order. Merely because the appellate authority may not have powers to stay the operation and implementation of the impugned order, the remedy of appeal cannot be said to be ineffective. There are number of provisions in different statutes where either right of appeal is not there or where onerous right of appeal is given and those provisions were held to be valid or intra-vires of the Constitution of India by the Apex Court of the country. In case there is no provision for stay in the appeals, it can hardly be said to be an excuse to by-pass the statutory remedy of appeal provided under the Rules aforesaid against the impugned order. However, this Court cannot be oblivious of the fact that interim relief has been granted by this Court way back on 19.1.95 and it is continuing for more than four years and seven months. So at this stage, I do not consider it to be appropriate to vacate the same. The Special Civil Application is dismissed on the ground that the petitioner has efficacious alternative remedy of appeal under the Rules, 1971. The petitioner is at liberty to file appeal in this matter and in case the same is filed within one month from today, it is expected of the appellate authority that it may not dismiss the same only on the ground of limitation. It is further expected of the appellate authority to decide the appeal within a period of two months from the date of filing thereof after giving opportunity of hearing to the petitioner, if he so desires. Till the appeal is decided by the appellate authority, the interim relief granted by this Court shall continue. However, it is made clear that in case the appeal is not filed within one month, interim relief granted by this Court shall stand vacated automatically without reference to the Court. Rule discharged. No order as to costs.

.....  
[sunil]

